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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,789

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EXAMINER
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HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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07/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/820,789

Applicant(s)

LIVINGSTON ET AL.

Examiner

Khoá D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/30/07 & 05/15/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,7,11-13,15-20,22-24,26,28-34,36-39 and 41-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,7,11-13,15-20,22-24,26,28-34,36-39 and 41-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 7, 11-13, 15, 22-24, 30-34 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pucci et al. (5974600) in view of Alfter et al. (4073535).

Regarding claim 1, the Pucci et al. reference discloses a spa cover system. The system includes a spa cover (12) and a flat, resilient gasket (74) provided at the bottom (38) of the spa cover. As schematically shown in Figure 8, the gasket is a solid material without a hollow space. The Pucci et al. reference DIFFERS in that the gasket does not specifically include a thicker portion and a thinner portion as claimed. Attention, however, is directed to the Alfter et al. reference which discloses a resilient gasket (Fig. 2c) for sealing the gap between surfaces (Fig. 3). The gasket, as shown in Figure 2c, includes a cross-section having a thicker portion at an inner edge and a thinner portion at an outer edge of the gasket. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Pucci et al. reference by employing a resilient gasket having a thicker portion and a thinner portion in view of the teaching of Alfter et al. Such modification would

be considered a mere choice of a functionally equivalent gasket for another in the art that would work equally well on the Pucci et al. device.

Regarding claim 2, the gasket is made of elastomer which resembles rubber.

Regarding claim 3, the Alfter et al. reference also discloses that the gasket is made of a foam rubber material (col. 2, lines 45-48).

Regarding claim 4, the gasket (74) is adhesively bonded (via element 76) to the bottom of the spa cover. Also, the Alfter et al. reference also discloses that the gasket is bonded to the cover by adhesive.

Regarding claim 7, the spa tub includes a rim portion (20) at a top of the spa tub, wherein the gasket is inherently deformed between the spa tub and rim portion to a sealed contact.

Regarding claim 11, the cover (as shown in Figure 5) further includes a first portion, a second portion and a hinge (58) provided at a top of the spa cover connecting the first and second portions.

Regarding claims 12 and 13, as schematically shown in Fig. 5, an edge (constitute by elements 48 & 54) of the first portion and an edge (constitute by elements 50 & 54) of the second portion are adjacent to one another, a space is provided between the edges and a part of the gasket is provided on the edges. Also, schematically shown in Figure 6, a flap (66) extends from the top of the spa cover into the space between the edges, wherein a resilient flap gasket (68) is provided at an end of the flap.

Regarding claim 15, the spa cover system further includes a spa tub (10,16) having rim portion (20). In the closing configuration (Fig. 3A), the gasket is obviously in a deformed manner for being disposed between the cover and the top rim of the tub. The outer edge of the gasket is at a position closer to an outside wall (about 18) of the tub than the inner edge.

Regarding claims 22-24, the cover is a multiple-piece (two-piece) cover with a hinge (58).

Regarding claim 31, the Pucci et al. reference discloses a spa cover system. The system includes a spa tub (10) having a tub rim (20), a spa cover (12) and a resilient gasket (74) interposed between the tub and the cover and provided at the bottom (38) of the spa cover. As schematically shown in Figure 8, the gasket is a solid material without a hollow space. The Pucci et al. reference DIFFERS in that the gasket does not specifically include a thicker portion and a thinner portion as claimed. Attention, however, is directed to the Alfter et al. reference which discloses a resilient gasket (Fig. 2c) for sealing the gap between surfaces (Fig. 3). The gasket, as shown in Figure 2c, includes a cross-section having a thicker portion at an inner edge and a thinner portion at an outer edge of the gasket. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Pucci et al. reference by employing a resilient gasket having a thicker portion and a thinner portion in view of the teaching of Alfter et al. Such modification would

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be considered a mere choice of a functionally equivalent gasket for another in the art that would work equally well on the Pucci et al. device.

Regarding claim 32, the gasket is made of elastomer which resembles rubber.

Regarding claim 33, the Alfter et al. reference also discloses that the gasket is made of a foam rubber material (col. 2, lines 45-48).

Regarding claim 34, the gasket (74) is adhesively bonded (via element 76) to the bottom of the spa cover. Also, the Alfter et al. reference also discloses that the gasket is bonded to the cover by adhesive.

Regarding claim 36, view as a whole, the cover is a one-piece cover.

Regarding claims 37-39, the cover is a multiple-piece (two-piece) cover with a hinge (58).

3. Claims 16-20, 26, 28-30 and 41-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Pucci et al. (as discussed supra) in view of Ziebert et al. (6112340).

Regarding claims 16 and 17, the cover includes a core insulating material (42) and a cover material (constituted by elements 36 & 38 in Fig. 6) that surrounds the entire core insulating material. The Pucci et al. reference also discloses that the cover material includes a plurality of diverse waterproof layers (col. 5, lines 5-9), wherein at least one of the layers is a different material than the other layer (the layer constituted by element 38 is of a different material than the waterproof silicone applied between elements 48 and 42). The Pucci et al.

reference DIFFERS in that it does not specifically disclose that the layers are laminated together as claimed. Attention, however, is directed to the Ziebert et al. which discloses another spa cover (Fig. 3) including different layers, i.e. ABS plastic and foam core that are laminated together with glue or adhesive to form a single united waterproof barrier. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Pucci et al. reference by a multi-layers cover laminated together, in view of Ziebert et al., in order to provide a lightweight, high strength structure using minimalistic amounts of material, especially since the Pucci et al. also discloses that the layers are secured together using adhesive (col. 4, lines 40-42).

Regarding claim 18, the cover material is a multi-layer PVDC resin.

Regarding claims 19 and 20, even though the modified Pucci et al. reference does not specifically disclose that one of the plurality of diverse waterproof layers is provided at a different orientation as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified Pucci et al. reference by employing different orientations for the plurality of diverse waterproof layers. Such modification would be considered a mere choice of a preferred arrangement for the plurality of diverse waterproof layers on the basis of its suitability for the intended use, especially since applicant, in the remarks section, page 11-12, readily admits that one skill in the art could easily make different layers having different orientations without undue experimentation.

Claims 26 and 28-30 recites limitations that are similar to the spa cover limitations of claims 16-20 which have been rejected as discussed supra.

Regarding claims 50 and 51, cover further includes a third waterproof layer (at 74).

Regarding claims 52-55, the single united waterproof barrier is a multi-layer barrier film which is obviously capable of being made from a co-extruded material. Furthermore, the claimed phrase "co-extruded material" is being treated as a product by process limitation: that is the cover or barrier is made by material by co-extrusion. Thus, even though the modified Pucci et al. reference is not specific as to the process used to make the cover or barrier, it appears that the product (the cover or barrier) would be the same or similar as that claimed

Regarding claims 41 and 42, as shown in Figure 3, the single waterproof barrier material surrounds the entire core of material.

Regarding claims 47-49, the materials are plastics.

Regarding claims 43-46, since the layers are laminated together to form a multiple-layers moisture barrier, such cover would inherently cause a synergistic effect of the physical properties so as to improve the moisture penetration rate. Even though the modified Pucci et al. does not specifically disclose that the moisture penetration rate is at least 100 times lower than that of a single species as claimed, it, however, would have been obvious to one of ordinary skill in the art to recognize that the multi-layers cover would have a penetration rate at least



100 times lower than that of a single layer cover since it is harder for moisture to penetrate a multi-layer cover than a single layer cover.

***Response to Amendment***

4. Applicant's amendment, filed on 03/30/07, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

***Response to Arguments***

5. Applicant's arguments filed on 03/30/07 and 05/15/07 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that the combination of Pucci et al. and Alfter et al. does not teach the gasket including a thicker portion and a thinner portion as claimed and that there is no suggestion to combine the references. See Remarks section, pages 12-13.

Applicant also asserts that the combination of Pucci et al. and Ziebert et al. does not teach the spa cover as claimed and that there is no suggestion to combine the references. See Remarks section, pages 13-15

The examiner disagrees.

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In addition, the test for obviousness is not

whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case, Pucci et al. teaches a cover with a gasket, except the gasket does not include a thicker portion and a thinner portion as claimed. Alfter et al. is relied herein for the teaching of another cover having a gasket including a thicker portion and a thinner portion. The examiner maintains that such modification, i.e. employing a resilient gasket having a thicker portion and a thinner portion is well within one of ordinary skill art and is not convinced that the use of a gasket having a thicker portion and a thinner portion rises to the level of patentability.

Furthermore, Pucci et al. also teaches a cover having first, second and third layers attached together form a single united waterproof barrier. Nevertheless, Pucci et al. does not disclose that the layers (first and second) are laminated together. Ziebert et al. is relied herein for the teaching of laminating the layers of a spa cover. The examiner maintains that such modification, i.e. laminating the layers to form a single united waterproof barrier is well within one of ordinary skill art and is not convinced that the use of a cover having layers laminated together rises to the level of patentability.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'K. Huynh', with a horizontal line underneath.

Khoa D. Huynh  
Primary Examiner  
Art Unit 3751

HK  
07/19/2007